APPEAL NO. 031616
FILED AUGUST 6, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on May 15, 2003. The hearing officer determined that the appellant's (claimant) impairment rating (IR) is 9% as certified by Dr. T, the Texas Workers' Compensation Commission (Commission)-selected designated doctor. The claimant appeals, asserting that the 9% IR is not supported by the evidence, in that the IR was not calculated properly and does not follow the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides, third edition). The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable low back injury on _____. The carrier's required medical examination doctor, Dr. L, examined the claimant on August 29, 1997, and found that he was not at maximum medical improvement (MMI) at that time. He again examined the claimant on May 18, 1998, and, in a Report of Medical Evaluation (TWCC-69) dated May 22, 1998, certified that the claimant reached MMI on May 18, 1998, with a 5% IR, which was assessed using the AMA Guides, third edition.

Dr. T was appointed by the Commission as designated doctor. He initially examined the claimant on July 15, 1998, and found that he was not at MMI.

In a TWCC-69 dated May 6, 1999, the claimant's treating doctor, Dr. O, certified that the claimant reached MMI on May 3, 1999, with a 16% IR, which was assessed using the AMA Guides, third edition. The treating doctor assigned the claimant 7% impairment for a specific disorder of the lumbar spine under Table 49, Part (II)(C) and 10% impairment for loss of range of motion (ROM) (lumbar flexion 4%, lumbar extension 2%, lumbar right lateral flexion 2%, and lumbar left lateral flexion 2%). The treating doctor combined the impairments under the Combined Values Chart (CVC) to arrive at the 16% IR.

In a TWCC-69 dated July 22, 1999, the designated doctor certified that the claimant reached MMI on May 3, 1999, with a 9% IR, which was assessed using the AMA Guides, third edition. The designated doctor assigned the claimant 7% impairment for a specific disorder of the lumbar spine under Table 49, Part (II)(C), and 2% impairment for loss of lumbar ROM (lumbar right lateral flexion 1% and lumbar left lateral flexion 1%). The 7% impairment for a specific disorder of the lumbar spine was combined with the 2% impairment for loss of lumbar ROM using the CVC of the AMA Guides, third edition, to arrive at the 9% IR.

The parties stipulated that the claimant reached MMI on May 3, 1999. It is undisputed that the AMA Guides, third edition, is the appropriate version of the AMA Guides to use in this case to assess the claimant's IR. *See* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.1(c)(B)(ii) (Rule 130.1(c)(B)(ii)). With regard to the IR issue, the claimant appeals the hearing officer's finding of fact that the designated doctor's certification of a 9% IR is not contrary to the great weight of the other medical evidence. The claimant also appeals the hearing officer's conclusion of law that the claimant has a 9% IR. The claimant contends on appeal, as he did at the CCH, that the designated doctor incorrectly applied the AMA Guides, third edition, when he invalidated lumbar ROM based on the straight leg raising (SLR) test.

For a claim for workers' compensation benefits based on a compensable injury that occurs before June 17, 2001, Section 408.125(e) provides that if the designated doctor is chosen by the Commission, the report of the designated doctor shall have presumptive weight, and the Commission shall base the IR on that report unless the great weight of the other medical evidence is to the contrary, and that if the great weight of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Commission, the Commission shall adopt the IR of one of the other doctors.

The SLR validity test for lumbar ROM is set out on page 89 of the AMA Guides third edition, as follows: Tightest SLR – (hip flexion + hip extension) is less than or equal to 10 degrees. Texas Workers' Compensation Commission Appeal No. 94056, decided February 24, 1995, explained that under the SLR validity test, lumbar spine measurements are valid if the sum of hip flexion and extension is within 10 degrees of the tightest SLR angle, and that the measurements are invalid if those two measurements are not within 10 degrees of each other. In subsequent decisions, the Appeals Panel held that the SLR test invalidates only flexion and extension ROM and does not invalidate lateral flexion ROM. *See* Texas Workers' Compensation Commission Appeal No. 962642, decided February 13, 1997, and Appeal Panel decisions cited therein.

In the instant case, the designated doctor's lumbar ROM worksheet (Figure 83c), dated July 16, 1999, shows that that the maximum true flexion angle is 46 degrees, that the maximum true extension angle is 17 degrees, that the sacral ROM angle that corresponds to the maximum flexion angle is 13 degrees, that the sacral ROM angle that corresponds to the maximum extension angle is 0 degrees, and that the maximum SLR measurement on the tightest side is 65 degrees. Thus, subtracting total sacral (hip) motion of 13 degrees (13 degrees plus 0 degrees) from the maximum SLR on the tightest side of 65 degrees results in a difference of 52 degrees, which means that the SLR exceeded total sacral (hip) motion by more than 10 degrees. Since the maximum SLR on the tightest side was not within 10 degrees of the sum of sacral (hip) flexion and extension, the flexion and extension measurements were invalid under the SLR validity test and the designated doctor was correct in assigning no impairment value for lumbar flexion and lumbar extension. The evidence sufficiently supports the hearing officer's determination that the claimant's IR is 9% as certified by the designated doctor.

The claimant takes issue with the designated doctor's invalidation of ROM, arguing that the designated doctor should have done a second set of evaluations, citing to page 71 of the AMA Guides, third edition, which provides: "Measurements may be repeated up to six times until consecutive measurements fall within this guideline." The claimant takes this comment out of context, as the immediately preceding sentence provides: "The examiner must take at least three consecutive mobility measurements, which must fall within +/- 10% or 5° (whichever is greater) of each other to be considered consistent." It is clear from the ROM worksheet that the designated doctor did achieve the "consistency" required by the AMA Guides, third edition. He had to take five measurements of lumbar flexion before he got the required consistency, and four measurements for SLR, Right, before he got the required consistency. For the other three areas on the worksheet, consistency was achieved with the first three measurements. We do not perceive any incorrect application of the AMA Guides, third edition, by the designated doctor.

To the extent that the claimant's argument is construed to be that the designated doctor should have repeated the ROM testing, we have previously recognized that retesting is a matter of medical judgment and have affirmed where the designated doctor indicated why a retest was not indicated. *See e.g.*, Texas Workers' Compensation Commission Appeal No. 970264, decided March 31, 1997; and Texas Workers' Compensation Commission Appeal No. 981384, decided August 10, 1998. In this case, the designated doctor specifically noted that the claimant compromised the evaluation by having a significant number of positive nonorganic signs, and that this was the second time that the claimant invalidated lumbar flexion and extension. Under these circumstances, the designated doctor did not recommend repeat testing of lumbar ROM.

We are satisfied that the hearing officer did not err in according presumptive weight to the designated doctor's report and that the hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701

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_____
Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

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Elaine M. Chaney
Appeals Judge

_____
Veronica Lopez-Ruberto
Appeals Judge